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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 RODOLFO LOPEZ-CUPA,

12 Defendant.

CASE NO. CR10-5723 BHS

ORDER DENYING  
DEFENDANT'S MOTION AS  
PREMATURE

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14 This matter comes before the Court on Defendant Fabian Mendez's ("Mendez")  
15 motion for reduction of sentence (Dkt. 227).

16 On August 27, 2012, the Court sentenced Mendez to the mandatory minimum of  
17 120 months of imprisonment. Dkt. 196. On June 6, 2014, Mendez filed a motion for  
18 reduction of sentence under 18 U.S.C. § 3582(c)(2). Dkt. 227.

19 In this case, Mendez's motion is premature. Mendez argues that Congress has  
20 reduced the mandatory minimum for his crimes to 60 months of imprisonment and,  
21 therefore, his sentence should be reduced accordingly. However, "[t]he language of the  
22 sentencing statute prevents [a court] from applying an amendment without authorization,

1 express or implied from the Sentencing Commission.” *United States v. Torres-Gonzalez*,  
2 834 F.Supp. 550, 553 (D. Puerto Rico 1993). Although Mendez expects the Sentencing  
3 Commission to retroactively apply the reduction, the Court is without authority to reduce  
4 Mendez’s sentence until the Sentencing Commission acts on the retroactivity of the  
5 reduction. Therefore, the Court **DENIES without prejudice** Mendez’s motion because  
6 the motion is premature.

7 The Court also informs Mendez that it will normally deny a motion filed by a  
8 party when the party is represented by counsel. While Mendez may file civil motions to  
9 set aside or correct his sentence, Mendez is still represented by counsel in this criminal  
10 case. If the Sentencing Commission ultimately decides that the reduced mandatory  
11 minimum may be applied retroactively, then Mendez shall contact his attorney **before**  
12 filing a motion to reduce his sentence.

13 **IT IS SO ORDERED.**

14 Dated this 10<sup>th</sup> day of July, 2014.

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17 BENJAMIN H. SETTLE  
18 United States District Judge  
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